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International Court of Justice

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C L O S I N G A R G U M E N T S

before the

INTERNATIONAL MILITARY TRIBUNAL IN NUERNBERG

at the trial

of

HERMANN GOERING ET AL.

delivered by

DR. EGON KUBUSCHOK

Defense Counsel for the Defendant

F R A N Z V O N P A P E N

Nuernberg, July 1946.

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Your Lordship, Gentlemen of the Court:

PAPEN is accused of taking part in a conspiracy to commit a crime against peace. With respect to time the prosecution limits the discussions of the facts of the case to the termination of his activity in Vienna. It admits that for the subsequent period, especially during his activity as ambassador in Ankara, no indications were found to support the accusation. In other words, according to this viewpoint PAPEN is/said to have taken part in the preparatory actions for unleashing a war of agression - which actions as regards time, - the prosecution has placed very far ahead, but he is not said to have actively participated in the immediate preparations and in the crime against the peace itself.

The prosecution deals with PAPEN's activity as Reich Chancellor in the last pre-Nazi cabinet, with the part he played as vice-chancellor in Hitler's cabinet until 30 June 1934, and with his activity as Minister Extraordinary in Vienna. It was faced with the task of proving that during this period preparatory actions for a crime against peace actually took place and that PAPEN in full recognition of those aims collaborated in the preparations. Since the counts of the indictment deal with a field of activity which is in itself a legal one and since the criminal element cannot be introduced into the individual acts except in the direction of their aims, judgment of the PAPEN case lies essentially in the subjective field. The prosecution is faced with the fact that PAPEN's own sentiments which often came to light and the policy which he actually pursued cannot be made to agree with the interpretation given by them. Therefore, they seize upon the premise that he is a double-faced opportunist who has sacrificed his real sentiments or those displayed, to the existing conditions of the day and Hitler's will. In consequence it must be the task of the defense to bring about an elucidation of his personality in order to prove that PAPEN's actions and statements constitute a uniform consistent line and that his entire attitude de facto was such as to forbid connecting him with the offences of the Charter; and that those of his actions which are under discussion must have been undertaken in pursuit of other aims than those which the prosecution thinks it can recognize. Furthermore, the defense will

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outline Papen's entire political activity in its legality and within the frame work of this activity it will deal with the actions considered punishable by th prosecution and will finally submit counter-evidence showing that he actively worked against a political development as represented by the facts of the case brought forward in the indictment.

We shall arrive here at a just evaluation only if the discussion is kept away from the question of political suitability and correctness and if we accept the politician as he reveals himself to us with the opinions which he developed from origin and tradition. Moreover, an essential element in judging fairly will be the elimination of that knowledge we have now received at the trial from later years and concerning this later period.

We shall have to direct our considerations only to the time of the actions themselves, and only then shall we obtain a clear opinion of what Papen could see and expect at that time.

The prosecution places the beginning of Papen's participation in the conspirac on the 1 June 1932, the date of his appointment as Reich Chancellor. However, it gives no answer to the question from what circumstances we are to see Papen entry into the association of conspirators which is alleged to have been already in existence. It is impossible indeed to give an answer to this. Papen's activity as Reich Chancellor cannot either be regarded in the least as an activity in the sense of a Hitler conspiracy. The idea behind the formation of t cabinet, the entire leadership of the government during his chancellorship, an finally his departure from office are too clearly manifest, to allow us to read into them a promotion of Nazi ideas, a paving the way for National-Socialism or even a participation in a conspiracy allegedly already on foot.

The Papen cabinet was formed at the time of an unusual economic, political and parliamentary depression. Unusual means had already become necessary under the preceding cabinet. They were to be continued now in part on entirely new lines. In times of unusual crises

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a parliamentary legislative body probably always offers a certain difficulty. Therefore, even in the days of Bruening's cabinet the Reichstag was almost completely excluded from legislation and for all practical purposes was placed in the hands of the Reich President by means of the Notverordnung (emergancy powers law).It was now thought necessary to work on new lines. A cabinet of men who were experts in their own field but who were not bound to any party, was to do away with these difficulties. Therefore, it was with this intention that the new cabinet was composed without the collaboration of parties. The tasks with which the new government was faced and the program necessarily resulting from the conditions of the time brought with them of necessity an attitude which was hostile to National-Socialism. Any wish to strike at the roots of the depressio must involve a fight on the part of government policy against the roots which would lead to the growth of National-Socialism. These lay in discontent over economic conditions and the political situation abroad.

But on the other hand one could only think of doing peaceful and reconstructive work of any benefit if some modus vivendi could be found with the National-Socialist Party.Not only according to constitutional law alone had the party the power to practically paralyze every government activity. With nothing more than the possibilities it had as regards propagandistic influence on the masses it offered the key to a possible pacification of inner-political conditions, the first prerequisite for the start of farreaching economic measures.

Papen was faced with this situation in the last days of May 1932 when without anything of his doing and to his surprise he was commissioned by Hindenburg to form a presidential cabinet.

With regard to his governmental activity I wish to limit myself in my defense against the indictment to the following details:

The formation of the cabinet of 1 June 1932 took place contrary to previous parliamentary custom without any preceding consultation with the National-Socialist Party. New pioneer economic laws with hitherto unknown financial commitment were decreed in order to fight unemployment and at the same time to

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eliminate the previous inexhaustible reservoir for the growth of the National-Socialist Party. The purpose of the new economic measures and the limited financial possibilities were the conditions for a great enlargement of the frame of these laws in time. The labor market was to be stimulated by means which were to result from the future savings of public taxes if the measures were successful. The economic laws were based only on this exhausting of financial possibilities. Intentionally no use was made of unproductive public work projects or a stimulation of the labor market by armament orders. These long range economic measures which could be successful only in the case of an uninterrupted government policy made the problem of their acceptance by the Reichstag especially urgent. In the field of foreign politics Papen continued the course which the Bruening cabinet had pursued and in so doing he laid particular emphasis on those points of honor the recognition of which would have brought no damage to the other parties to the treaty, but which would have taken from the National-Socialist Party a forceful means of propaganda in influencing the masses.

At the Conference of Lausanne Papen openly explained the innerpolitic situation. He pointed out that substantially ideological points were at stake the denial of which would give the National-Socialists the impetus they desired. He explicitly emphasized that his efforts were the last attempt of a middle-class cabinet and that in the event his policy failed only National-Socialism would profit from it.

Papen strove to make the National-Socialist Party take a share in the responsibility without wishing to entrust it with the key position of the office of Reich Chancellor, a share in the responsibility which would have brought a party of negative politics to a recognition of actual conditions and which would thus have eliminated the attractive demagogic propaganda.

These first attempts by Papen to bring about a participation of the National-Socialist movement in governmental work is already regarded by the prosecution as paving the way for National-Socialism.

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However, this is nothing actually but an attempt to find a basis of some kind for pratical governmental work, an attempt which had to take into account the experience of the Bruening cabinet and the development of the National-Socialist Party. The fact could not be disregarded that already the Reich presidential election in March 1932 had brought Hitler 36.8 % of all the votes. If one takes into consideration the fact that Hindenburg was the candidate on the opposite side and that Hindenburg's personality certainly caused many followers of the NSDAP to cast their vote in this special case in a way which was not in accordance with party directives, the fact follows that a heretofore hardly known opposition party arose which numerically outweighed by far all the other parties, and which in its position as an opponent was able to paralyze a priori any governmental activity. Hence followed, what was a foregone conclusion for Papen, the endeavour to get this party out of its status as an opposition party. This decision would be all the easier if the firm conviction were there that a share in the responsibility of government would turn the opposition party from its radical course and especially curb it considerably in its further development.

The best evaluation of Papen's governmental activity, seen from the standpoint of the National-Socialists, comes from the fact that it was the National-Socialist Party which opposed Papen's decisive economic legislation and with its vote of no confidence - pronounced jointly with the Communist Party - brought about the end of the Papen cabinet.

The subsequent negotiations of the still acting Reich Chancellor, especially the events of the 1 and 2 December 1932 show again his unequivocal attitude toward the NSDAP.

Papen proposed a violation of the constitution to Hindenburg. He wished to exhaust this last means in order to avoid a Hitler chancellorship. Schleicher prevented this solution on the grounds that in the event of a civil war which might then break out the government would not remain master of the situation with the existing police and military forces.

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In the face of these clear historical events the attempt of the prosecution must remain without success to read the opposite into the facts and into these clearly recognizable, unequivocal motives

What are then the points which the prosecution believes that it can marshal in the face of this?

One: that Papen, in his first negotiation with Hitler and a short time after forming his government, consented to rescind the order prohibiting the wearing of uniforms, a measure which, even if it had merely been taken as a political compensation deal to achieve acceptance of the cabinet, would be something very natural according to parliamentary rules. Not only was the NSDAP the strongest party in the Reichstag, but also and especially on accou of its general political work in public life it constituted a powerful factor of the first order. Therefore, it could not a priori be driven into a state of opposition if it was intended at all to pursue a realistic policy of long duration and to overcome the emergency in earnest by revolutionizing the economic program.

The repeal of the prohibition concerning uniforms was based also on more deeplying reasons, because it was a one-sided prohibition against one party and the opposing organizations were not limited in this respect and the acknowledgment of the law of equal treatment here could only eliminate dangerous propaganda material. The repeal of the prohibition concerning uniforms was furthermore by no means the announcement of a license for political acts of violance. The warning of the Reich President, announced with the proclamation of the decree, that acts of violance resulting from the decree would bring about an immediat prohibition of the organizations as such, according to all intelligent estimation should have had the effect of preventing damaging results.

The claim of the prosecution that the repeal of the prohibition concerning uniforms was the main cause of the increase in the number of National-Socialist seats at the July election, is completely at variance with the facts. In this connection I will refer to the already mentioned result of the Reich presidential election of March 1932 at which the real situation did not even become completely manifest owing to the fact that Hindenburg was the candidate on the other side. The election of 21 Juli 1932 brought 13 700 000 National-Socialist

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votes whereas in the Reich presidential election of 10 April 1932 Hitler had already received 13,400,000 votes. There are no grounds whatsoever for the assumption that the appearance of uniforms which, incidentally, had been replaced earlier by camouflaged standardized clothing even during the period of prohibition, might have had a determining influence on the outcome of the elections.

Much more important and in a negative sense more decisive for the outcome of the elections was certainly the general prohibition of political parades proclaimed by the Papen cabinet at the beginning of the election campaign. Public meetings and political parades are the most important expedient for a party under demagogic leadership. To have this taken away before the election was undoubtedly a much greater minus for the NSDAP than the previous plus it had received in the form of permission to wear uniforms.

In the letter of 13 November 1932 in which Papen again tries to induce Hitler to participate in the government, the prosecution sees an effort which is undignified in its form and blameworthy in its essence, to smooth the path of National- Socialism to power. It forgets that Papen conducted the November elections in sharp opposition to the NSDAP, because he tried to remove the party from the key position in which without Hitler it was impossible numerically to form a majority from the Social-Democrats inclusive of them and extending to the farthest right. It forgets that this result had not been achieved, that the key position even with 196 seats remained with Hitler and that, therefore, it was necessary to make another attempt to win Hitler over for a presidential cabinet under some conservative chancellor. It overlooks in this point that Papen's proposals here again had the definite aim of excluding the NSDAP from the Reich Chancellorship. For National-Socialism a cabinet under a conservative politician, who according to the constitution would have had to determine the principles of the policy, would only have brought the party's influence on to this or that department, but in return for this influence it would have resulted also in its sharing the responsibility through its participation in the government. From the standpoint of opposition to National-Socialism seen in retrospect one could indeed have welcomed nothing more.

than such a case in which the party's participation in the government w limited in influence and had a share in the responsibility. The end of opposition policy which was so tremendously favorable for propagand would undoubtedly have brought about the end of the growth of the Natic nal-Socialist movement and the conversion of its radical elements.

The polite form of the letter was due to the official duty of the Rei Chancellor towards the leader of the strongest party in parliament. It a foregone conclusion that in using this form and because of the purpo of the letter the writer does not refer to negative points but to thos positive things which were suitable for use in any cooperation in the government.

In order to be able to construct from the period of Papen's Reich- chancellorship something that is at least a foothold in proving his union of idea with National-Socialism the prosecution has imputed to the temporary elimination of the Prussian government by the decree of 20 July 1932 intentions which in no way could pass the test of an objective examinat

The "coup d'etat" of 20 July, as the prosecution terms the executior of the decree of 20 July, had not the slightest thing to do with promot the National-Socialists. In the opinion of the Reich cabinet and accor ing to the decisive judgment of Reich President von Hindenburg domesti policy showed the necessity for eliminating that toleration of Communi acts of terror which was practised by the Prussian cabinet in office a which continuously and openly came to light. From this state of affai Hindenburg drew his conclusions and issued the emergency decree (Notv ordnung) of 20 July. By a decision of the then still entirely indepen Reichsgericht (Reich supreme court) it was determined that this decre with regard to constitutional law was permissible within the fram ork of state political necessities.

If in carrying out this decree the request was indeed actually conv by police authorities to the minister of the interior who had been su pended, that he leave his offices, the word "coup d'état" lends a mean to this measure which goes far beyond what actually happened. Also in considering the effects of this measure an assumption that here the w was paved for National-Socialism

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is not justified by any facts. The appointed Reich Commissioner Bracht belonged to the Center Party ("Zentrum"). The key position of police president in Berlin was intrusted to a man on whom the hitherto existing cabinet Braun had previously conferred the offic of police president in Essen. Briefly, the result of the change was only that on the one hand an effective cooperation was now assured with the Reich authorities, and on the other hadd new people filled some political positions which up to now had been the almost exclusive monopoly of the Social-Democratic Party, to an extent which from the point of view of parity could no longer be justified, That in filling these positions the National-Socialists were passed over, was a charge which was made against Papen time and again by the National-Socialists.

Consequently, Papen's entire term of office in the government constitutes a clear line of realistic politics which show that on the one hand he did not let go the rudder in carrying out necessary and especially economic measures, but that on the other hand he tried to get a numerically almost overwhelming opposition party to collaborate. Papen's attitude towards the NSDAP became even more manifest after he had been asked by the Reich President late in November 1932 to collaborate in the effort to form a new cabinet.

In this he showed he had the courage to take the most extreme consequences. Realizing that it was impossible to go on with a non-National-Socialist government according to parliament/any/ principles, he submitted to the Reich President the proposal to rule with the aid of armed force even if he thus caused a violation of the constitution and risked causing a civil war.

It is just as difficult to reconcile oneself with such a proposal, when one adheres to thinking along lines of constitution law as it is impossible to overlook in retrospect that the proposed violation of the constitution limited in time was probably the only possibility to avoid the solution which then became necessary on 30 January 1933.

Any other temporary solution could not have had a satisfactory result. Sooner or later the opposition party would have forced the resignation of any non-National-Socialist cabinet.

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Thus, the political unrest with its consequences on the entire economic life would have become a latent state. A state of affairs, which, by its alternate effect, was only suited to strengthen the national socialist movement and thus to bring it by force to a numerical strenght which in the end would have resulted in the fulfilment of its entire totalitarian claim for assuming unlimited.power.

The part played by Papen in the formation of the cabinet of 30 January 1933 might in itself be disregarded. It is sufficient to be aware of the fact, that all endeavors to bring about a parliamentary government without Hitler, were already impossible from a purely numerical standpoint, and that such a parliamentary solution with Hitler was wrecked by his opposition. A measure born out of political and constitutional necessity cannot, according to the indictment, be considered as evidence of intended planning of a crime in the sense of the Charter. The significance of this count of the indictment must be considered. By maintaining all parliamentary rules, a government is appointed by Hindenburg in his capacity of chief of state, the head of which is the lead of the strongest party. This government when presented before the parliament, finds an overhelming majority. That which Papen is accused of, the knowledge of the activities of the National-Socialist party in the past, holds true to the same extent also for the other participants, Hindenburg and all consenting members of parliament. The reproach levelled against Papen thus includes also an accusation against Hindenburg and the entire consenting parliament.

For this consideration alone, the unique attempt of including in a indictment a self-evident, constitutional procedure of a sovereign state, must probably fail.

If despite this fact I go into the events which occurred before the formation of the government, it is only in order to clearly show here, too, the unequivocal standpoint of Papen, who on one hand did not wish to close his eyes to the real facts, but on the other hand desired to undertake everything in order to prevent the danger of an uncontrollable development of this new formation.

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The prosecution considers the Hitler-Papen meeting at the home of Schroeder on 4 January as being the beginning of the efforts made for the formation of the Government of 30 January. As a matter of fact the meeting at Schroeder's was nothing else than an exchange of ideas about the situation of the moment during which Papen and Hitler maintained their previous opinions and Papen pointed out that Hindenburg, owing to the apprehensions which he expressed, would in no case agree to Hitler's taking the position of Reich Chancellor. Hitler would have to accept the position of Vice-Chancellor, since Hindenburg took the standpoint that the possibility for a further development would only follow after he had proven himself over a long period of time.

This meeting in Koeln took place upon Hitler's request. I refer in this instance to Schroeder's communique published by the press, which I submitted as document No.9 of the defense, and which I erroneously indicated during the cross examination as being a joint communique issued by Papen and Schroeder. Schroeder establishes in it that he himself took the first step toward this meeting.

The fact that this meeting was in no way been the basis for the formation of the Government of 30 January is obvious from the fact that the discussion was immediately reported by Papen to Schleicher and Hindenburg and that during all the following time until 22 January Papennhad nothing to do with the solution of the governmental problem. Schleicher as well as Hindenburg endeavored to obtain parliamentary support for the Schleicher cabinet through negotiations with the leaders of parties, efforts which failed, however, due to the weight of the political facts. The main effort was to split up the National-Socialist party by inviting the collaboration of the Strasser wing in the Government. Thes efforts failed when Hitler's position became so strong after the result of the elections in Lippe that he regained absolute control over the Party against all attempts to split it up. The outcome of the elections in Lippe of 15 January 1933 was generally considered as a barometer of public opinion with respect to the political situation. All parties had mobilized their entire organization and propaganda apparatus,

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and therefore one could draw a conclusion from the result of this election concerning the general public opinion. The result showed that the losses suffered during the November elections were almost completely made up. Thus everybody could recognize that the decline of the National-Socialist movement was stopped and that with the continuance of the momentary/political and economic situation a further gain was to be expected.

The necessity for a decision became more and more urgent when on 20 January 1933 the Council of Seniors of the Reichstag - through its convocation of the Reichstag for the 31 of January - granted to Schleicher's cabinet practically only a peridd of grace up to that date. For a vote of no confidence introduced by the left and the NSDAP meant its immediate fall. The meeting in the house of Ribbentrop on 22 January, when Hindenburg wanted to learn through his son and/the state secretary of the Presidential Chancellery Dr. Meissner Hitler's opinions about the political situation, has to be considered from this point of view.

The part Meissner played in it and also his general part in the formation of the Hitler Government cannot be established with certainty be means of the data at hand. In any case, being a member of the immediate circle around Hindenburg who finally took the decisive decision, he was by no means uninterested in the matters. His personality has been judged at least very differently. Because of his own interest in the case he can in no event be considered as a classical witness for the judgment of the events of that time. His testimony bears certainly in one point the stamp of unlikeliness. He maintains that he/opposed Hindenburg's decision, after the latter decided to appoint Hitler to the office of Reich Chancellor. This is said by the same man who during the session of the Cabinet concerning the "Enabling Law" (Ermaechtigungsgesetz) did not consider it necessary to maintain the right of the Reich President to proclaim laws, the same man who after the events of 30 June 1934 obviously collaborated in isolating Hindenburg from all those who could give him a true representation of the events. I make these remarks

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because a part of a Meissner Affidavit was read during the hearing of evidence against Papen. Although according to the decision of the Tribunal, the contents (of the affidavit) which was read shall not constitute a basis for the verdict, during the cross examination-questions were nevertheless asked which referred to the affidavit; this could cause an erroneous judgment Besides, the decision of the Tribunal relieves me of the obligation to discuss in detail the contents of the affidavit and to indicate a number of inaccuracies which could be easily refuted.

The hearing of evidence has shown that until the 28 of January, Papen made no attempts whatsoever as regards the formation of a Government. On that day, in view of the imminent convocation of the Reichstag, Schleicher had to bring about a decision.

On 1 December 1932 he advised Hindenburg against an open fight against the parliament and stated that the employment of the Armed Forces in a possible civil war would be hopeless. Now he thought that he himself could find no other solution than to beg to be permitted the use of those forces which he previously considered as being insufficient. But since no change in the situation had occured since that time which could offer reasons for Schleicher's change of opinion, since moreover the position of the NSDAP was strengthened by the elections in Lippe and the general political situation had become still more tense through the attitude of the parties, Hindenburg upheld his decision of 2 December. Thus, the resignation of the whole Schleicher cabinet was inevitable. Now the events had to take their course, which necessarily and logically they had to follow, if the possible use of arms was to be avoided.

There was only one solution now: Negotiations with Hitler. Hindenburg commissioned Papen to conduct the negotiations for the formation of the government. On Hitler's part is was clear that he would maintain his inflexible demands namely to take over himself the office of Reich Chancellor.

The task, clearly recognized by Papen, was now to set limits to the political activities of the new party which had not proved itself yet on such a large scale.

First of all, a change of course had to be avoided in those ministries

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in which any radicalism would have been particularly detrimental, namely the Foreign Office and the War Ministry. Hindenburg reserved for himself the right of filling these two key-positons. In order not to entrust the new Chancellor with appointing the remaining ministers, as had been customary here tofore, Papen was charged with this task in his capacity of homo regius. He succeeded in limiting the number of national-socialist ministers to a minim Three national-socialist members of the Government faced eight non-national socialistswho for the main part were taken over from the former cabinet and who guaranteed a steady policy in their ministries. That was not all; within the framework of the constitution the authority of the Reich Chancellor was to be limited in a manner never known before. Papen was appointed to the position of Vice-Chancellor. His function was not connected with a special department but mainly intended to constitute a counterpoise to the position of the Reich Chancellor. It was decided that Hitler in his capacity of Reich Chancellor should report to the Reich President von Hindenburg only in the presence of the Vice-Chancellor. Thus, a certain control was established when the Reich President formed his opinion about the requests presented by the Reich Chancellor.

In view of Hindenburg's personality, of which, according to human foresight, one could expect a quite considerable influence upon Hitler, this control over the information Hindenburg received promised that a shift towards a radidal course would be avoided. This was the part the defendant had in the formation of the Hitler Government!

The prosecution sees herein a decisive, conscious step towards the transfer of full power to National-Socialism.

By considering the case objectively, even in retrospect, one can indeed arrive only at the conclusion that in view of the inevitable necessity of ceding the leadership of the cabinet to the National-Socialist party, all possibilities for limiting the importance of this measure were exhausted. The position of Reich Chancellor left to National-Socialism and the appointment of only two National-Socialist ministers

represented the limit of Hitler's originally much more extensive demands and this limit was only reached after long efforts.

For the consideration of the present proceedings it would not matter if the solution adopted on 30 January was the only possible one or not. Even if one were of a different opinion, the only thing that matters in looking at the case from a criminal angle is whether Papen could consider this solution as a necessity or only as a mere political expediency. Even if, contrary to all the facts one regarded his opinion as a Utopia, it should be taken into consideration from the point of view of penal law that one could only speak of a guilt if he had known the future consequences and the future plans of aggression and if in spite of this he had collaborated in the formation of the Government. The facts just mentioned have proved that there is not even the slightest supposition for this.

In considering the case it is of especially decisive importance also that the two ministries which are the most important or which are the only ones to play a part at all in connection with the accusation of breaking the peace, the Foreign Office and the War Ministry, were placed in the hands of men who enjoyed Hindenburg's confidence/and had no connection with Hitler/ and of whom an unbiassed direction of the ministries could be expected.

It is not unimportant to consider in this instance what expectation one might have from Hitler's personality and his future policy.

The leader of the opposition party takes for the first time the responsibility. A party, the structure and development of which could certainly occasion many objections and apprehensions. A party which had developed on the basis of an absolutely negative attitude towards the hitherto existing Government leadership. A party which with its noisy appearance had certainly made many concessions with regard to the constitution of its membership. A party which had laid down a new program including points some of which seemed a long way from reality and impossible to carry out and which caused many objections,

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but which -and this is the only essential fact within the scope of our consideration of the case- apparently did not have any criminal characte

On the other hand one cannot disregard the experience taught by life and history that propaganda and responsible work are two very different things. That a party which develops from nothing needs, according to experience, more negative and noisy propaganda than an old existing party. Even if the cabinet of 30 January had consisted of National-Socialists exclusively, even if a moderating element had not existed in Hindenburg's personality, one could have assumed according t the rules of reason and experience that Hitler, who acceded to power by means of propaganda, would take into account the existing conditions in his practical, responsible work and would show himself in his activities essentially different from what he appeared during the propagandistic preparation of the ascension to power.

A small example had already shown the difference between a party in opposition and in responsible Government work: The same National-Socialists with their same program and their same propaganda who now, on the 30th of January took possession of the position of Reich Chancellor had already held the leadership or participated in the governments of some German states (laender). We see Frick, the leader of the Reichstag faction act as responsible minister in Thuringia. His field of action included even the police and we see the National Socialists zealously tackling some economic problems in these states . But we did not see them commit excesses or not even pursue an unreasonable policy which would have been at least in approximate agreement with their propaganda. Could it not be expected then that in the Reich, together with the greater tasks, the natural sense of responsibility would also increase? And that especially in view of the safety measures taken, matters would not take a dangerous course?

It is not superfluous to discuss Hitler's personality in this connection. Hitler, especially after the failure of the attempt to split off the Strasser group

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was the absolute autocrat of his party. Undoubtedly he did not show in the leadership of his party, in his speeches and in his appearance that reserve which would have been a matter of course for the leader of such a big party. However, all signs indicated that Hitler had the party under control to such an extent that he would be able to put through also unpopular measures which had to be taken under the pressure of reality. In the questions concerning the participation in the Government he had pursued a policy wise in its tactics but unpopular with the impatient masses, because he took the facts into account.

Could it not be expected then that this man who now had reached his aim namely to take over the leadership of the cabinet would abandon the unrealistic ideas he advocated when he was in the ranks of the opposition and would submit to the real exigencies of public and international life?

It is also a general fact known from experience that a man confronted with particularly great aims and with a particularly big responsibility grows as a ruler and as a man in proportion with these aims and this responsibility. In view of this general historic experience one could not assume that a man entrusted with responsibility, after certain initial attempts which could be interpreted as being promising, would soon revert to the thesis of his former opposition ideas; that after a couple of years this man would throw overboard every positive idea he emphasized - I remember for instance Hitler professing his adherence to the Christian foundations of the State - and that he would even surpass the negative ideas he formerly advocated and increase to an immeasurable extent his aims and his methods. We see now Hitler's full development before us and we are perhaps tempted to interprete his actions during the last years, because they represent something which is so monstrous and therefore so particularly impressive, as being the manifestations of his whole personality, while assuming that during the preceding time he had already been the same.

It is not possible, within the scope of this trial and based upon the events, upon his speeches and especially his actions, to interpret and to understand Hitler psychologically, from the beginning of his political appearance until its end.

His well-known fear of disclosing himself and the mistrust he showed more and more towards nearly everybody in his sphere of life make it particularly difficult to judge his personality.

The individual facts which occurred, however lead to the certain conclusion that Papen too, despite the fact that he was close to Hitler, could not suspect him in 1933 of being the man he showed himself during later years.

If Papen, in agreement with Hindenburg's wishes and while executing his orders in his capacity of homo regius did everything in order to prevent the possibility of a radical development, fully aware of his responsibility, he also strove with all his energy towards the same goal over and beyond the obligations of this task.

After the formation of the cabinet he did not cross his arms and take the easy way, which would have been favourable for him from an opportunist point of view. He undertook to form a counterweight to the National-Socialists at the elections of 5 March 1933 through a union of the conservative parties of the right. For someone who would have adopted the National-Socialist ideas or even agreed to offer blind obedience to their leader, the next thing to do would have been to put an end to the opposition of this large newly constituted conservative group and to let it make its way towards a union with the party which had recently come to power, a way which at that time appeared to many as absolutely natural. Papen entered the election contest as leader and organizer of the oppositional group "Black-White-Red" (Schwarz-Weiss-Rot) His speeches of that time, excerpts of which I submitted in the document book, show a clear picture of his aims and intentions. They were the affirmation of a nationalistic idea, free from the propaganda licentiousness of National-Socialism and its doctrines. In any case, his program was in irreconcilable contrast to what later turned out to be the unpredictable extension and unlimited transgression of the confirmed aims of the NSDAP. The formation of the political action block "Black-White-Red" was to guarantee what Papen had tried to achieve by the composition of the Cabinet of 30 January: a coalition cabinet which as an inevitable result of parliamentary rules and the entire political situation

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left the post of Reich Chancellor to the leader of the strongest party, who however was forced to rule in the framework of a coalition cabinet with all the limitations which derived from it.

I believe that I have made it sufficiently clear by these statements that Papen's collaboration in the formation of the Cabinet of January 30 does not constitute an attempt to place National Socialism in a position of exclusive power. The opposite has been proven by facts.

With regard to the defense I have gone far beyond what would be necessary in any way for the denial of a verdict of guilty. If even at that stage somebody had cooperated in really giving the national socialist party an exclusive influence, there still would not be any proof to see in this of a preparatory action for the punishable crime in the sense of the accusation.

The program laid down by the National Socialist Party and the statements of the party leader of that time, which in view of their propaganda value must be construed much more narrowly from an objective angle, can be misinterpreted as much as one likes, and one may read into them in retrospect any number of facts which became recognizable later, one still cannot see in all this the way to the crimes set out in the Charter.

In Papen's activities as Vice-Chancellor during the period from 30 January 1933 to 30 June 1934, the prosecution thinks it can see a continuation of his efforts towards a conspiracy for the purpose of consolidating the positic in power of the ruling National-Socialists. The prosecution has charged him in this connection with collaboration in the various laws passed during this period by the government, which according to their opinion merely served the aforementioned aims.

I will demonstrate, however, how the work of the defendant developed in detail, in particular that he did not deviate from his original policy.

The prosecution deals with a number of laws passed by the cabinet in the beginning which must be considered as a compromise as far as their political format is concerned, a compromise between the demands of the National Socialis and the conservative ideas of the other members of the cabinet.

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We see problems being touched which National-Socialism made the subject of discussion and propaganda for years. The conservative members of the cabinet were then facing the following situation:

The strongest party and the Reich Chancellor could not entirely ignore these questions, they had to be solved in some form.

The principle of every coalition cabinet entails a compromise for both parti In compromising, the other party need not change its opinion. If, for example, in a coalition cabinet, which is led by a labor party, the program of the labor government which perhaps contemplates a general socialization, i to be carried out in practice, the collaboration of the other members of the cabinet will consist in preventing a general extension of the measure and in limiting its effect to those cases, which in their opinion deviate least from the course followed before. One cannot expect from the strongest party and from its leader who occupies the constitutional position of Reich Chancellor to continue the policy of his predecessors. The other members of the coalition must make sacrifices if any governmental activity is ever to be possible.

Since in the framework of this Trial we do not have to judge considerations of political expediency and not even moral conceptions, but only whether what happened, was done with a criminal purpose in the sense of the Charter, the task set for the defense is comparatively simple.

In the legislation we see the ideological problems raised by National-Socia ism/Partly solved. We must concede to the non-National-Socialist cabinet members involved that, in considering these laws, they thought about a final soluti and not about an intermediary stage. Their basis was the experience of the past, the experience of the political life of all countries, namely

that a problem settled by law is normally concluded. It was unthinkable - for it was incompatible with a normal governmental activity and the preservation of the authority of a legislative body -

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- that after the issuance of a law, a problem which had already been dealt with should continually be considered anew in the following years and each time be brought to a more radical solution. Papen has proved that he carefully tried to maintain the concessions made to the opponent within a more or less endurable limit. The fact that in the laws of that time, National-Socialist doctrines appear only rarely and in moderate terms, shows sufficiently that the composition of the cabinet of that time with regard to personalities had a retarding influence on the penetration of National-Socialist ideas.

Without this influence it would not be understandable why Hitler undertook a relatively unpopular limitation of the previously advocated aims of the party

The hand of the defendant which checked and corrected the shaping of the individual laws is clearly discernable. The classic example for this are his endeavors in bringing about the Enabling Act (Ermaechtigungsgesetz). It was a technical necessity to the legislation during the crisis of that time. The preceding years had shown that owing to the time-consuming deliberations in the Reichstag , urgently needed legislation was not acted upon satisfactorily. Therefore, already in Bruening's time, almost all the legislative power was practically put in the hands of the Reich President, so that the important laws were issued in the form of emergency decrees by unilateral legislative acts of the Reich President. If, due to these compelling reasons, the legislative power could not in practice be left in the hands of the Reichstag, the legislative power thus transferred to the cabinet constituted a compromise. As shown by the result of the Reichstag vote concerning the Enabling Act, none of the parties including the Zentrum party failed to recognize this. The question now arises as to whether the right of the cabinet, where, according to the constitution the Reich Chancellor had to establish the fundamental lines of policy, would be limited by the fact that the right of proclaiming laws was reserved for the Reich President. The State Secretary of the Reich President himself declared in a cabinet session that

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he did not think it necessary to charge Hindenburg with the responsibility of the entire legislation because of the latter's right to proclaim laws. Papen's direct intervention with Hindenburg immediately afterwards remained without success, as stated by the witness TSCHIRSCHKY.

Then, we see Papen again in the foreground when the problem of anti-Semitism had its first legal result. At that time, the situation was the following:

There were the broad masses who for years had been influenced in this direction, a predominantly National-Socialist group who had consistent anti-Semitism as one point on their program. We saw the effects of propaganda on the masses which manifested themselves in the aforementioned individual actions, during the first weeks after the formation of the Hitler government.

The conclusions to be drawn from this situation were clear. A problem which has been stirred up, which had already a pernicious outcome in practice, had to be legally settled. It was clear that in this question National Socialism through its exaggerated propaganda, had contracted a certain obligation towards its followers. It was difficult to determine the extent of the legal limitation which for the incited masses always remained a disappointment. The way out could only be a compromise. The settlement was directed to a field where a change in the hitherto existing situation seemed to be the least severe.

Whereas in accordance with the contents of the "Professional Government Employee law"" (Berufsbeamtengesetz) only those were dismissed from their position who occupied their position not on account of their professional qualification, but due to their membership in a political party, all Jewish government employees who were appointed after 1918 were also dismissed. As a rule, a right of pension was maintained. Papen's successful endeavor aimed to limit numerically the effect on the Jewish government employees concerned. He had an audie with Hindenburg, who was especially approachable on the idea of protecting war veterans. Through Hindenburg's personal influence on Hitler, Jewish war veterans and dependants of fallen soldiers were then excepted from this law.

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Since an overhelming part of the young government employees who had be employed since 1914, were war veterans, the numerical effect of this e eration was quite considerable. This is made especially clear by the official figures published concerning the conditions in the legal profession, and which were presented in Defense Exhibit No. 33.

Furthermore, the defendant is charged for the measures taken against the labor unions. First consideration must be given to the fact that the measures were not carried out by a regulation based on a Reich law. It is moreover important that with the reshaping of affairs the continuation of labor unions with a Social-Democratic character and a similar influence might have appeared as an anachronism.

Papen's attitude with respect to the labor union problem is shown by his speech of 4 March 1933, Doc. No. 10.

Here, too, it must be considered that at the time the measures were taken one could not have foreseen the extent of their further development. Considering its many rather sound ideas for the settlement of social questions, the German Labor Front at the time of its foundation did not merit the judgment it now deserves for the coercive measures taken at the end.

The amnesty decree, as shown by the hearing of evidence, is no novelty.

Also in 1922, in order to set an end to a period of political unrest, a amnesty decree was issued, which also pardoned crimes subject to de sentence. The establishment of special courts was a measure of expediency to speed up the sentencing of political offenders, becaus longer normal proceedings did not safeguard the desired momentum of warning. It is significant that the order concerning crimes of viol was applied for the first time during Papen's Reich chancellorship, National-Socialists in the case of the Potempa murderers (Doc.1.pa and 7). Thus it is erroneous to see in the nature of those laws a commendation of actions committed or a promotion of the Nazi idea.

If the prosecution, in criticizing Papen's legislative activit during this time, still engages in considering the Political Coordination Act for the states (Laender) of 31 March 1933, it touch first of all a question of home policy, which is really far outside field which could justify a discussion in the sense of the Indictme

If the indication of the prosecution should have the sole purp of showing that Papen has in this respect changed the point of vie advocated previously, it must be said here that political opinions in general subject to alterations and often must be altered, and th from a change of conception with respect to political expediency measures one can by no means draw a conclusion as to a general char of opinion. As a matter of fact, the first Statthalter Act was designed t eliminate a dualism between the Reich and the states (Laender), which Papen had always considered as disadvantageous. Papen has always advocated, especially with respect to Prussia, a solution in the sense of Bismarck's time, when the office of President of the Prussian Council of Ministers

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and that of Reich Chancellor were united in one person.

Thus, this question which ought to be touched only in passing involves not even a change of opinion, much less of change of sentiment.

The following must be considered with respect to the legislative work in the cabinet of the defendant von Papen:

His position of vice-chancellor was without an administrative province. The influence, even in political questions, which the head of a regular ministry had in cabinet sessions did therefore not exist in the case of Papen. He coul only express misgivings or objections from a general point of view, without being able to base them on departmental grounds.

Considering the small number of cabinet session protocols available - despite all my efforts I did not succeed in procuring the remaining ones, - the extent of Papen's opposition and that of the other ministers cannot be proved by documents. The fact that he voiced this opposition was revealed in the hearing of evidence. But, as admitted, the success was a small one. Thus, it is the duty of the defense, to investigate deeper the reasons why Hitler's powerful position gradually increased and why the influence of the non-National-Socialist ministers became smaller, in short, why the guarantees failed which had been provided when the government was formed on 30 January.

At the beginning the course of the cabinet sessions did not deviate from the normal procedure. The questions which arose were made the subject of discussions. Hitler did not try to carry through at any cost the bills which were rejected for good reasons. A clear description to that effect is given by the affidavit of the former minister

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Hugenberg (Def.Exh.No.88)

The elections of March 5, with the overwhelming success of the National Socialist party brought along a substantial change. Beyond its purely parliamentary effects, Hitler was strengthened in his conviction of being the deputy of the German people. He thought that now the time had come for him to make u of his right, granted to him by article 56 of the constitution of the Reich, to determine in his capacity of Reich Chancellor the fundamental lines of polic even in case of an opposition on the part of the ministers.

With respect to the constitutional situation I refer to Doc.No.22,which shows that in questions of fundamental policy even a majority decision of the minist was without effect against the decision of the Reich Chancellor. Now, Hitler became very unapproachable to any suggestions. In case of a relevant oppositi he thought to have against him an oppositional phalanx, and soon it became evident that objections made in the cabinet were of no use to change Hitler's attitude. At the best, one could hope, as the defendant v. Neurath declared as a witness, to influence Hitler outside the cabinet in a direct discussion.

The essential factors in Hitler's development into an autocrat were his increasingly strengthened position with regard to Hindenburg and his ever increasing influence on the Reich Defense Minister von Blomberg.

Hitler's first measures which, in Hindenburg's eyes, showed his endeavors toward the establishment of a strict order, had constantly improved Hitler's personal relations with Hindenburg. He skilfully understood to adjust himself to Hindenburg's mentality. Therefore, he succeeded very soon,

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to abolish the original stipulation concerning the obligation of making joint reports. Thus, PAPEN was deprived of the major possibility to influence Hindenburg.

The attitude of the War Minister von Blomberg was the second decisive point in Hitler's development.

The Wehrmacht was a factor of power. Hitler knew that its men and officers were probably essentially unpolitical, but that by no means - especially as far as its leadership was concerned - they were inclined to have national-Socialist ideas. An extensively radical course of the government might therefore always give rise to resistance on the part of the Wehrmacht. It must be added that owing to his personality, Hindenburg listened especially willingly to reports coming from military circles. As long as the War Minister was not a disciple of Hitler, the latter was prevented from carrying out any radical ideas.

It is not yet possible today to gain an historically clear picture, which would permit to explain the reason for Hitler's influence on Blomberg. We must state the fact that Blomberg became very soon an ardent admirer of Hitler, and that on his part no sort of resistance could be expected against any extensive radical development whatsoever of Hitler's policy.

The 30th of June 1934 proved this very clearly.

In retrospect the logical consequence of this development becomes clear. Hitler could only be impressed by [illegible]wer. The Wehrmacht with its strength of that time was, especially in relation to the position of the Reich President von Hindenburg, a factor of power with which, at the beginning, even Hitler and his party would not have been able to cope in case of a commitment of forces. That is the reason for Hitler's endeavor to win Hindenburg's confidence,

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that is the reason for his comparatively cautious maneuvering during the time before Hindenburg's death, which by no means allowed to presume a further stronger development. From the time of Hindenburg's death, Hitler appeared as a dictator without consideration for anything and who, at least in the field of internal policy displayed his ruthless power policy.

In addition to the legislative activity of the cabinet, the prosecution dealt with the question to what extent Papen was responsible for the oppression of political opponents and for certain acts of violence which occurred during the period which the terminology of that time called "national revolution."

During the cross-examination Papen was asked whether he knew about the arrest and mistreatment of individual Communist and Social-Democratic personnages named to him. Papen gave an essentially negative answer. However, he knew that due to the Decree for the Protection of People and State issued by the Reich President, measures had been taken which suppressed the personal liberty of a great number of leftists. The decree was issued by the Reich President, outside Papen's responsibility and by suppression of the relevant constitutional stipulations. It was established under the impression created by the Reichstag fire, an event which up to the present day has not been clearly elucidated, but for which the official statement that Communist circl had instigated the arson, seemed to be absolutely believable. Especially since the search of the Liebknecht House, the Communist headquarters, produced, according to Goering's declarati very serious evidence concerning the actions planned against the Reich cabinet. The inquiry was held by a judge of the Reichsgericht (Reich Supreme Court) a personality, the

whose impartiality was beyond any doubt. Therefore, Papen could understand the legal security measures which the administration of the interior thought necessary.

But knowledge of the arrest of those politicians is by no means connected eo ipso with the knowledge of the details and of the extent of the measures taken at that time.

During the years of the National-Socialist regime we learned again and again, that the knowledge of acts of violence remained restricted to the narrow circle of the direct participants. The measures taken before the release of an interne in order to reduce him to silence, were evidently successful. Thus, we see agai and again, that there was always only a small circle of knowing persons which was composed of the immediate environment of returned internees. This explains the fact which sometimes amazes one afterwards namely that quite large circles were not informed of the kind and extent of the excesses committed. It is evident that close relatives and similarly thinking friends of the politicians arrested at that time, knew of what had happened to their people. The extent o the secrecy is shown best by the fact, that the witness Gisevius assumes that the conditions in concentration camps did not become generally known to Gestapo officials until 1935.

Thus, it seems to me absolutely explainable, that Papen knew very little about the measures, which during the first months were almost exclusively taken agai political opponents of National-Socialism coming from leftist circles, at any rate, that his knowledge did not go beyond the fact, that in this respect, arrests were made within the scope of the "Decree for the Protection of Nation and State."

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It was a different matter, however, with the later encroachments on the rights of church offices and organizations, which to a large extent appealed to him and whom he at once tried to help energetically. The same holds true for the measures in connection with the 30th of June, 1934, which will be discussed later on.

In any case it is a decisive fact, that the measures as far as they were outside the law, were subject to the jurisdictic of the police and the Ministry of the Interior. The law itself is an emergency decree of Hindenburg's. It came about legally. The now broadened conception of protective custody does not in itself constitute a crime.

With regard to anti-Jewish excesses the prosecution accused Papen of having sent a telegram to the New York Times on 25 March 1933 describing the situation in Germany as quiet so far, and of having pointed out that individual actions had occured but were now prohibited by an order from Hitler.

From the sources which were accessible to him Papen had of course heard of the excesses of which individual SA-men had become guilty in this period which was still unsettled politically If, on 12 March 1933, Hitler categorically forbade such actions by individuals and ordered the strictest punishment for any culprits in the future, Papen could assume with a clear conscience that this order which emanated from the highest authority would hence forth be obeyed.

In passing, it is not uninteresting in this respect to refer to a public announcement of the "League of Jewish Front Soldiers" of 25 March 1933. This proclamation also stated the fact that the situation with respect to the Jewish population was in general quiet and that excesses were confined to actions by individuals;

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which had now been forbidden by Hitler. (I shall submit this publication of the League in my Document Book for the Reich Government.)

The same standpoint was taken in a publication of the American Chamber of Commerce in Cologne on 25 March 1933, which publication I shall also present during the hearing of evidence for the Reich Government.

The Jewish boycott which was announced some days later and wh was carried out on 1 April 1933, was, contrary to the opinion of t prosecution, no government measure but exclusively a party measure which Papen, too, sharply opposed as well as others in the cabinet. The publication of the "Times", submitted with Neurath's defense Exhibit No.9, proves that over and beyond this Papen made representations to Hindenburg and called for the latter's intervention wit Hitler.

For the rest, one must take into consideration the fact that the Jewish boycott had been announced as a defensive counter measure which was to be limited in time and to be extended only to busines life. It had been expressly ordered that any use of force was forbidden and that excesses were to be prevented by corresponding measures. In its presentation of matters of domestic policy the prosecution has merely shown that through the measures taken the position of the National-Socialist party was to be strengthened, s that is should then be possible to turn to the aims of the foreign policy of force which had been decided upon beforehand. Still more important than the discussion of domestic conditions is therefore an examination of the foreign policy of the Reich during the time Papen was Vice Chancellor.

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Hindenburg's reservation that he would appoint the Foreign Minister and the appointment of von Neurath to this post when he had been Foreign Minister until then and was not a National-Socialist, leads one necessarily to expect a development of foreign policy along the course hitherto taken.

Hitler's first measures seemed not only to justify this expectation but even to go beyond it. The first speech on matt of foreign policy held on 17 May 1933, dealt with Germany's relations to Poland which in the past had never been entirely satisfactory. The annexation by the Poland which had newly com into existence of large territories formerly belonging to the German Reich had brought with it a latent tension between thes states. Hitler was the first to take up the problem and to resolve, according to his declaration in the Reichstag, to bring about a policy of friendship with Poland by recognizing the Polish state and its needs. If one considers the fact that the thought of renouncing all claims to a revision against Poland was not only generally unpopular but also stood in sharp opposition to previous propaganda, it was impossible to foresee the development of later years. One was necessarily convinced that here was an internally strong government supporting its domestic reconstruction with a policy of peace abroad.

Germany's adherence to the Four Power Pact, and its renewed profession of adherence to Locarno serve to underline this conviction. The struggle in foreign politics for ideological values lay in a / different / direction. The question of eliminating the clause in the Versailles Treaty which stipulates Germany's exclusive guilt and the question of equal rights for this large country which had pursued a persistent policy of peace since 1918, were demands which on one hand did not seem to burden the other side with unbearable sacrifices and which were yet suited,

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to remove from the German people an ideological burden which it considered a pressing one.

Germany's withdrawal from the disarmament conference must b considered from these view points. It took place after long drawn out negotiations had produced no positive results and because it was in no way evident that the powers were inclined to bring about in future a fulfilment of the German demands. The declaration of the Reich Government and of Hindenburg that this step was to be looked upon as a tactical step, and that the same objectives were to be retained, namely the preservation of peace under recognition of equal rights, all this therefore had t appear credible and reasonable.

From the same points of view Papen also approved of this step. With regard to the simultaneous withdrawal from the League of Nations, opinions could have/differed./ Here, too, one might hold the view that the withdrawal was necessary as a movement of protest and that one could prove through factual efforts in the matter itself that it was intended to adhere to a policy of peace.

Papen figured among those who felt obliged to advise again withdrawal from the League of Nations, even though he himself had experienced as Reich Chancellor that the negotiations in th large and manifold assembly of the League caused certain difficulties in some questions. On the other hand, however, he was so convinced of the institution of the League of Nations as an instrument of agreement and of facilitation of the technical possibilities for agreement that he wished to avoid withdrawal from the League of Nations. He advocated this opinion very strongly. Since he could not persuade Hitler in Berlin he followed him to Munich shortly before the decision in order to lay his well-founded opinion before him there.

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Ergo we see Papen here working actively in a field for which in his position as Vice-Chancellor he actually has no reponsibility, aiming at a solution which if one takes as a basis the views of the prosecution concerning the withdrawal from the League of Nations can only be considered as a step towards peace.

Because of the fundamental importance of the withdrawal from the League of Nations the measure was submitted to the German people in form of a plebiscite enabling it to state its opinion. On the occasion of this plebiscite/ Hitler/ the government and Hindenburg issued proclamations which emphasized expressly that this step was not intended to constitute a change of policy but merely a change of method. Preparations for the plebiscite were carried out in line with this statement.

The prosecution accuses Papen of having glorified in his Essen speech the successes of Hitler's government and of having advocated an unconditionally affirmative attitude towards the questions to be decided by the plebiscite.

If Papen did this, it was because he felt obliged to do so, the decision having been cast once and for all and having to be justified before the foreign countries. If the responsible leaders actually did not strive for anything but a change of methods, no objections could be made. The position of German foreign policy would have been shaken if the people had shown in the plebiscite that it opposed the measure already taken. It was therefore quite natural to approve of this policy in public within the frame-work of the solemnly given assurances. Moreover, it could not be overlooked that in a plebiscite on government measures the vote of confidence could not pass over internal politics /al- together.

We have to take the date of the speech into consideration. In November 1933 Hitler had made good progress in the field which was in the foreground of necessity and interest,

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namely in the easing of economic distress and the elimination of unemployment. His measures were on a large scale and at first showed apparent success. Here, t one cannot measure things by the same standard as one applies to them today in full knowledge of their development. At that time the course taken hitherto see justified by its success. In his electoral speech which demanded a vote of confidence in the government for the purpose of agreement on a matter of foreign policy, Papen felt obliged to refer appreciatively to this positive developme in internal politics.

In his introductory speech Mr. Justice Jackson acknowledged himself in the following words the conditions in 1933 which have been described:

"After the reverses of the last war we saw the German people in 193 regain its position in commerce, industry and art. We observed its progress with out distrust and without malice."

Of all problems of foreign policy it was perhaps the question of German-French relations which interested Papen most. In his own testimony he has stated his views on this subject and has related how as early as in the twenties he collaborated in various political and or Catholic bodies with the idea of promoting understanding and a rapprochement between France and Germany. I refer in this connection to Document No. 92 and to the meeting between Papen and the French Colonel Picot which is described therein and which is characteristic of Papen's attitude.

In the new government, too, Papen paid special attention to this question as commissioner for the Saar territory. We see how he attempted to avoid also in the Saar question everything that could in any way impair the relations between the countries, even if only temporarily.

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From this came his suggestion that there should be no recourse to a plebiscite which might give renewed impetus to politic[illegible] chauvinism in both countries. Hitler himself, not only before he took over power but also as responsible chief of the cabinet had stated time and again that Germany had no intention of bringing up the question of Alsace-Lorraine, but that the Saar question was the only problem to be still settled between the two countries. And in so doing he followed the suggestions of Papen entirely which aimed at a peaceful settlement.

Furthermore Papen is accused of having deceived the contracting party, namely the Vatican, when he concluded the concordat in July 1933. By concluding the concordat Papen had intented merely to strengthen Hitler's postion and to enhance his reputation abroad.

The hearing of evidence has shown that the concordat in its effects, too, was a bilateral pact and that the legal obligations of the concordat offered certain legal protection to the violated party also during the Treaty violations on the part of Germany which followed soon afterwards.

In any case, it is entirely wrong to suppose that Papen had any knowledge of intended future violations of the treaty and that he had brought about its conclusion while he was in possession of such information. If he had wished to enhance Hitler's reputation abroad this means would have been the least suitable that could be imagined. A struggle against the church without the concordat would have been a matter which, it is true, would have met with an unfavorable reception abroad, but which nevertheless would have been an internal German affair. Through the existence of an interstate treaty these church persecutions became simultaneously a violation of an international treaty with

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resulting effects of a special nature upon prestige. One cannot conclude a treaty for the purpose of gaining prestige if immediately after its conclusion one proceeds to violate the same treaty.

This deliberation alone already refutes the assumption of the prosecution. Beyond this the accusation of the prosecution is of symptomatic importance. Every action of Papen's which has somehow come to light must be interpreted in the sense of the conspiracy theory to Papen's disadvantage, and the simplest recipe for this is to place the later development into the foreground, claiming Papen's cooperation and knowledge in this development, and to designate his previous contrary statements of opinion as ambiguous and double-faced. This recipe is simple if one considers the knowledge of later developments in retrospective as self-evident and if one does not picture the true, factual situation at the time, above all, if one makes no effort to reexamine the logic in the original intention which is claimed and the further developments it had. Only in this manner can one as in this instance achieve a result which on closer consideration presupposes the folly of the person acting at the time.

But quite apart from these deliberations the attitude of the defendant towards religious matters prohibits the slightest doubt in the sincerity of his intentions. In the hearing of the evidence it was set forth that not only his closest personal advisors in church affairs but also the highest dignitaries of the church who were in closest personal as well as professional contact with the defendant in these matters, emphasized that his attitude as a Catholic was absolutely free of reproach at all times.

The lack of foundation of the whole indictment with regard to church questions is already made clear by the confutation of the assertion of the prosecution that Papen himself broke the Concordat by dissolving the "Work Association of Catholic Germans" (Arbeitsgemeinschaft Katholischer Deutscher")- I refer in this respect to the unequivocal testimony of the former secretary of the "Work Association of Catholic Germans", Count Roderich Thun, Defense exhibit No. 47. It must be stated, however, that Papen not only saw with regret the

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subsequent violations of the Concordat by the Reich but that he actively tried to oppose them. The entire activities of the "Work Association of Catholic Germans" consisted practically of nothing else but the establishment of such violations of the Concordat in order to furnish Papen with a basis for his constant interventions with Hitler. After Papen's departure for Vienna the practical opportunity for such interventions ceased to exist.

From all of Papen's speeches it is evident that his attempt at safeguarding the churches did not emanate from considerations of political expediency of the day but from his fundamental religious attitude. I believe there is no speech in which he did not express himself on this problem emphasizing time and again that only the Christian philosophy of life-and thus the Christian churches - could be the foundation for the orderly government of a state. In just this Christian foundation he saw the best protection against the tendency of the par to give preference to an ever increasing extent to the idea of sheer might over that of right.

With regard to Papen's report to Hitler of 10 July 1935 (P.S, 2248) which was submitted during the cross-examination the prosecution fell victim to a quite obvious misunderstanding.

Papen refers in it to the favorable results there would be in the field of foreign politics if one could succeed in eliminating political Catholicism without touching the Christian foundation of the state. Papen does not state here his opinion on past and present situation but furnishes advice for the future. The contents of this advice are definitely positive in the ecclesiastical sense. They state that one may eliminate political Catholicism but the purely ecclesiastical interests

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themselves, that is the christian foundation of the state, must remain untouched. These directives destined for future times obviously contain a criticism of the past as well. We see here how in connection with activities in the field of foreign policy matters are discussed and brought up to Hitler which in themselves belong to another field.

In his own testimony Papen stated his opinion of the accusation of the prosecut that as a good catholic he should have resigned after the Pope had issued his Encyclical Letter "With Grave Apprehension" of 14 March 1937. Papen could refer in this connection without any criticism and with full approval to the standpoint of the church itself which has always been of the opinion that one should hold a position so long as it still offers the slightest opportunity for positive work. Owing to this wise attitude and to its feeling of responsibility for the German Catholics the Church did not completely break with the Third Reich until the end. One cannot ask an individual Catholic to take any other standpoint. This all the less as Papen in purely foreign political activities came into no conflict whatsoever with his Catholic conscience.

The accusation that in the fall of 1938 he should have protested to Hitler abou the treatment of Cardinal Innitzer, is also lacking in foundation. Papen himsel can no longer remember today when and in what form he heard of these occurances at all. The German press did not publish anything about it and in no case did such matters reach the public via internal Church channels, as the prosecution assumes.

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In any case at that time Papen had no possibility whatsoever to intervene, be ing merely a private person and besides in bad standing with Hitler for the moment.

I have alrady dealt with Hitler's development into an autocrat. After the abolishment of joint reports to Hindenburg, Papen's influence was reduced to minimum. Protests in cabinet sessions coming from a single man who was unabl to base these protests on requirements of his own department, were of purely declaratory nature. Meanwhile the circle of applying nazistic doctrines in practice was closing more and more. It became clear that the willingness to compromise of the first days in agreeing to a rule by coalition was slowly abandoned and that the national socialist idea kept gaining ground in all fi

It was clear to Papen, that he could not follow that course. It was like clear that he in the frame work of his official position could not alter the neral trend, despite his efforts to help in individual cases. On the other h his theoretically still existing position of Vice-Chancellor gave him certa weight in public life. Thus he had to face the problem, whether he should st forth with public criticism of prevailing abuses as a last attempt to gains influence upon the development by public discussion of the problems. Incase of failure, he would have at least achieved the public branding of those ab by a responsible party, even if

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as a natural consequence Papen would have to give up his position and would thus no longer be able to aid many people in individual cases.

In his Marburg speech of 17 June 1934 Papen distinctly branded all abuses which had become apparent until that time. Such extensive public criticism remained the only instance in the history of the "Third Reich".

He realized that the danger of Nazism lay in the fact, that its different doctrines in practice dovetailed into an encircling enclosure suppressing the entire public life. Had that enclosure been breached at a single spot, the dangerous character of the entire system could not have been maintained. If only one of the points discussed would have met with success when carried out in practice, it would have shown a total change of conditions. The system objected to could not have existed another day if the freedom of public speech, demanded by Papen, would have been granted. It could not have been upheld, if the conception of justice and of equality before the law were recognized. It could not have existed if freedom of religion were granted. A nazistic racial theory cannot be upheld if the maxim of the indivual's equality, common to to all confessions, is advocated.

Each of Papen's attacks in his Marburg speech - he had dealt with the racial issue already in his Gleiwitz speech - was in itself an attack upon the development of the entire nazi doctrine. The audience was clearly shown by a leading member of the opposition in the government, where the entirety of the abuses originated from.

The consequences for Papen of such an action were obvious to begin with.

Either Hitler would take into consideration the state of affairs, after it

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had become a matter of public discussion or PAPEN was going to offer his resignation, since for further cooperation he could no longer reconcile his viewpoint with the path chosen by Hilter.

Evidently Hitler in his position at that time did not consider it necessary t make a concession to public opinion by deviating from his line of action. He tried to kill the opposition by forbidding the publication of the speechhand by penalizing its distributors. PAPEN resigned, Hitler did not accept his resignation immediately, since he obviously had to take Hindenburg into consid ration, wishing to clear up the situation first of all with him. Meanwhile th events of June 30th took place.

What fate had been destined for PAPEN in the course of those events will probably never be known definitely. Particularly, it will never be elucidated whether different people were moved by different intentions.

The improvisation of the action becomes best apparent in the way it was carried out against the office of the Vice-Chancellor. Bose was the first victim in the very building of the Vice-Chancellory. Jung, who was arrested outside of Berlin, was similarly shot. His fate, though, became known to PAPEN and the public only much later, as it had been hoped at the beginning that he not only had left Berlin but had gone to Switzerland, having been warned by the measures taken against the Marburg speech. The other members of the staff, wh could be apprehended, were taken into custody by the police and later sent to concentration camps. As to PAPEN himself one evidently hesistated to make a final clear decision on his fate. His close relationship to Hindenburg would

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seem to indicate the advisability of not burdening the list of victims of Ju 30th with so prominent a name, after it had been burdened enough in relation Hindenburg with the crime, against Schleicher, camouflaged though as self-defense.

Anyway, within the framework of the accusation it suffices to establish that, whatever Papen's fate has been in the end, the measures taken against him and people demonstrate his absolute opposition against Hitler and the nazi polic

During the cross-examination the prosecution presented letters to Papen, which outwardly seem to show at first a certain divergence from his usual attitude.

In those letters Papen assures Hitler of his attachment and loyalty and hid his real and material desires under polite phrases which otherwise were in n way custo ary in his relations with Hitler. It may appear surprising, that a man who opposed the system, who had been persecuted for that reason and upon whose associates such incredible things had been inflicted, chose such a for of letter. But for a fair judgment a correct understanding of the state of affairs at that time is required. A state of lawlessness existed at that tim It offered a favorable opportunity to get rid of troublesome opponents in th course of these measures. The examples of Schleicher, of Klausner and others have sufficiently shown that.

There was no way of knowing beforehand when and in what manner the measures taken against the persons already involved in these matters would end. One believed almost hysterieally to see in every man with opposing ideas a conspirator with those SA groups, who sooner or later were really going to revolt against Hitler.

How far indeed persons of the right on the ground of their oppos attitude had joined hands with the SA, a powerful factor at that time has not been established yet with certainty. Anyhow it could not be j ged at that time whether or not Hitler's statements in regard to pers not belonging to the SA were correct.

For Papen the situation at that time was as follows: He knew of Bose's assassination, but was as yet unaware of Jung's fate. He hoped that the latter had escaped. Three of his co-workers were in a concen- tration camp. These had first to be released from there. And also for the future the suspicion had to be dispersed, that any one of them as well as Papen himself had been in contact with the SA circles in revo

If Papen ever wished to make any representations with Hitler, th first requirement for any possible success would be to put a distance between him and such SA circles. Papen therefore felt obliged to assu Hitler of his loyalty and faith.

Besides Papen has been convinced for years that Himmler and Goeb bels were behind the attack on him and the Vice-Chancellery and that Himmler in particular wanted to eliminate him, having been prevented f doing so only by Goering and that therefore in order to safeguard hir self against these two, it was necessary to assure Hitler of his corr attitude.

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In judging these letters it is not their form, but their contents which is es tial. The alpha and omega of the letters is the demand of rehabilitation for his own person and his associates. He demands a court action. He advises Hitl to strike out from his intended Justification Law all actions directed agains persons outside the SA-circle.

But what is the meaning of these demands of Papen? Their real significance is the upholding of what is legal against the illegal actions of 30th. He demands an objective and legal clarification of all that is to be condemned in the events of June 30th. When we consider these events of June 30th we must bear in mind that these events fell into two parts. The first were me sures against the SA leaders, whose radicalism had always been known and who were always to be connected with acts of violence and independent activities, which in the past had had to be condemned. An intervention against such peopl could be explained as an act of state-defense against dangerous forces which were ever ready for revolt.

The other part consisted of measures against personalities who s outside the SA-circle. A court investigation would have resulted in the clear up of these events and in the condemning of the responsible persons.

I believe that when in cool criticism one pictures to oneself the events at that time, one can only arrive at the conviction that Papen's situation aims could actually have been no other, than that which he had proposed to Hitl a rehabilitation by means of a court action of those persons who had been unju ly persecuted and the elimination of a summary justification of the measures i question by a law.

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If we come now to the heart of the matter and to what was actually desired we cannot give to the form of these letters the meaning whi is aseribed to them by the prosecution.

That the form in particular did not represent an approval of t measures of June 30th, but was merely used for the above-mentioned purpose, is best shown by the examination of the letter of 17 July. Though at that time Papen had achieved the release of his co-worker from the concentration camp, his other demands were not fulfilled Hitler. So we now see a piece of writing which is entirely lacking even in the most elementary forms of politeness. Merely objective statements and objective requests. A piece of writing signed only the name of Papen, without even a closing courtesy formula.

As to the affair in question Papen does not retreat from his line for a single moment: He holds fast to his resignation and dem immediate action on it, as the letter of 10 July 1934 shows.(Doc.D He refuses to play any part in future government activities. He le Hitler immediately after having had him called out of the Cabinet session on 3 July. He keeps aloof from the Reichstag session, at w the Justification Law has been confirmed. He rudely declines the o to accept the comfortable post of ambassador at the Vatican. Such his negative attitude.

As to the positive one, he strives to bring about the interve of the Wehrmacht. He turns to his friend Colonel General von Frits Homberg,owing to his attitude, is out of question. Fritsch will no act without a formal order from the Reich President. So now Papen endeavors to get in touch with Hindenburg. But Hindenburg's entour keepshim off.

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All accesses to his estate Neudeck are closed by SS guards. Papen sends his secretary Ketteler to Hindenburg's neighbor and old friend Mr. von Oldenburg to obtain entry in that way, but also that attempt fails. He has to witness, how obviously Hindenburg has been influenced, when he publicly approves of Hitler's conduct on the 30th of June in an official telegram.

So what was Papen to do now, which would promise even moderate success?

In his negotiations with Hitler he tried to keep things on a legal plain. The attempts to mobilize the only factor of power, the Wehrmacht, had failed. Hindenburg cannot be reached; he is evidently influenced by his advisers in the opposite direction.

The prosecution is of the opinion, that this was just the time when Papen should have openly pointed out the criminal event on June 30; he could possibly have effected thereby the collapse of the entire Nazi system. That assertion is untenable. Apart from the fact that Papen, as shown, had no longer the opportunity for such an official statement, subsequent developments in German demonstrated that such an individual protest would not have had any effect against the powerful position of Hitler wither within the country or abroad. Hitler's prestige in Germany was already then so great and more so later on, that such a protest, even if it could have reached the public at all, would surely not have found any echo in the masses of the population. To be sure, the great masses saw only the economic improvement and the strengthte ing of Germany's position abroad and only a numerically thin layer realized the true danger of the development. Most foreign countries knew about the events on June 30 more

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than the German people. A statement by Papen to the people would not have thrown much more light on it. No conclusions were drawn from t available information by foreign countries either at that time or later.

The prosecution is even of the opinion that such a step might have led to the reoccupation of the Rhineland by the French. I am unable to discover where the prosecution has found a basis for such an assertion. It is contradicted by the fact that no military react of any kind followed after the events which occurred later and which not belong in the realm of internal politics, but vitally touched the world abro -as for instance the introduction of compulsory military service ar the occupation of the Rhineland-.

By his resignation and ostensible non-participation in the sessions of the Cabinet and of the Reichstag, Papen showed the publ that he was hostile to the development. His conduct was a public protest against the measures of June 30 and against their perpetrat The prosecution can not overlook these apparent signs which are historical facts. It attempts therefore to construct an anti-thesis between his conduct and his mental attitude. The only assistance a their disposal to that end are the letters addressed by Papen in July to Hitler. Even if the spirit and purpose of those letters wer not clearly discernible from their contents, as in fact is the cas such an attempt would also fail in the face of the facts which wer just stated because of the inadequate means at hand.

Generally, I would like to state in this regard the following:

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On what ground should Papen have taken an inimical attitude towards Hitler during his Vice-Chancellorship and during the events of June 30, while being in fact a loyal follower of his? On what ground should Hitler have desired it himself who, according to the prosecution, conspired with Papen - and this, after all, would only be a result of the conspiracy: Could it be in the interests of Hitler, that Papen disclosed in his Marburg speech all the weaknesses and misdeeds of the Nazi system? On what ground should Hitler have wished that Papen so obviously distanced himself from the lawless actions on June 30? It should have been in his interest, that his Vice-Chancellor kept also outwardly in line with the Reichs-Chancellor.

If we consider that, only one conclusion can be arrived at: What the prosecution believes to be able to interpret as the mental attitude of Papen, lacks all logic.

This thesis of an unconditional obedience to Hitler, despite certain contrary facts intended to serve as camouflage is used again by the prosecution with respect to Papen's accept nce of the position in Vienna.

Before discussing this complex let me briefly state the following:

In my opinion, the final development of the Austrian question, which occurred after Papen's recall and undoubtedly without his cooperation, namely the marching in on 12 March 1938, does also not represent a crime in the sense of the Charter. The Charter considers as punishable the preparation and the waging of a war of aggression or of a war in violation of international treaties.

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In the three counts of the indictment, it has merely confined itself to the arraignment of what appears as a most serious crime with its terrible further consequences: The aggressive and prohibited war, the crimes against the rules of warfare, and the crimes against humanity in their most violent form, the immeasurable consequences of these grave actions, have all justified this unusual trial. The Charter does not charge the Tribunal with the punishment of all the injustice which has occurred during the course of the development of National Socialism. Such a task could not be fulfilled within the framework of this Tribunal, for technical reasons and for lack of time. It is not the task of the Tribunal to examine whether international treaties were observed or not. This question is only of importance if wars were caused or if the crim of violence which are to be described in detail have to be accounted for. The march into Austria is no war however far one stretches the conception from the standpoint of international law. In this case it is a decisive fact that no fo was employed and not even the slightest resistance was offered, that on the contrary the troops were received with jubilation. Furthermore, the march into Austria cannot be considered in connection with the later acts of aggression. It was a special case based on the special situation which since 1918 had already found its expression in the efforts both on the Austrian and on the German side to bring about a union (Anschluss) of the hardly prosperous Austrian state with Germany in some kind of constitutional form.

Therefore, the actual events must be detached ....
from Hitler's war plans or purely military plans of preparation - with which I shall deal later - and must be regarded

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as the solution of a political problem of the country which had become acute and the result of which had always been the desire of both sides, independant of HITLER.

PAPEN's activity in Vienna is clearly characterized by three episodes; the circumstances of his appointment on 26 July 1934, his letter to HITLER dated 16 July 1936 (Defense doc. No. 71) after the conclusion of the July agreement, and his recall on 4 February 1938.

The following circumstances lay at the origin of his appointment:

A crucial event had occurred. DOLLFUSS is murdered; not only are the relations between Germany and Austria strained but they have reached an extremely dangerous stage of development. The international situation is menacing. Italy is marching upon the Brenner. An ultimate divergence of Austria towards one of the groups of powers interested is directly to be feared. Thus, there is the threat of a final situation which would definitely render imposible the maintenance of even morely supportable relations between Germany and Austria.

In this difficult situation, HITLER obviously thinks it necessary to dismiss his objections against the personality of PAPEN and entrust him with the mission in Vienna. PAPEN was particularly fitted for the initiation of a policy designed to overcome the deadlock resulting from the assassination of DOLLFUSS. PAPEN had always spoken in the Cabinet favor of a friendly development of relations in the question concerning Austria. PAPEN was internationally known as a man for a reasonable policy of mutual understanding.

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PAPEN naturally was extremely hesitating as to the taking over of this post. His experiences in the domestic sector of the last period, his personal attitude to the treatment of himself and of his collaborators on the 30 June, his attitude to the assassination of DOLLFUSS, with whom he had been on most friendly terms since the time of his previous activity, were opposed to the taking over of the post. This resolution therefore was for PAPEN a very grave one. The perception, however, that he himself would alone be in the position to fulfill this task within the framework of true pacification must outweigh everything. Could he assume that anybody else had the strong will and also the possibility of assuring the maintenance of the road of appeasement? He could never expect a personality of the Foreign Office and still less a member of the Party to have such a personal independence as he himself enjoyed. From his post as Vice-Chancellor PAPEN brought his experience. He knew the difficulties, to convince HITLER by pertinent arguments in a corresponding form. He alone could hope to carry through his efforts for a peaceful policy, notwithstanding the extremist tendencies of HITLER's advisers. His experiences, on the other hand, had made him very careful. He made his conditions and demanded the establishment of a clear policy based on facts. He demanded the withdrawal of influence over the Austrian Nazi-movement, which must be assured by the dismissal of the man who directly or indirectly had participated in the criminal act: the Landesinspector HABICHT. He requested his own subordination to HITLER in order to make possible the maintaining of the conditions which he had proposed, and in order to avoid any alterations in the course its handling. He compels something seemingly impossible in contact with a head of the State; he has the conditions laid down in writing, under which he takes over his post as Ambassador

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They are signed by HITLER. He wishes always to be in the position to forc HITLER to keep to his written word.

We have a clear picture of these occurrences by the testimonies, particulary by the statement of the witness von TSCHIRSCHKY, a man who, according to the declarations of the Prosecution is really not suspected view these things in the defendant's favour.

The Prosecution asserts that PAPEN, out of sheer opportunism as a faithful follower of HITLER's already known plans of aggression, had eage ly and willingly declared himself prepared to take over the new post.

Notwithstanding this, can this form of appointment, this extreme pre caution of the defendant be really in agreement with such an attitude? These secret conferences, this unpublished document, signed by HITLER and in PAPEN's possession cannot really be considered a pretence in order deceive - as would be the consequence of the Prosecutions charge. These were not intended to be publicized and were never made public.

The circumstances at the taking over of the Vienna post could only lead to the conclusion that PAPEN honestly strove to maintain the establis ed appeasement policy. It likewise is impossible to talk here of opportu nism. PAPEN had declined the position of Ambassador to the Vatican. Thi position of an Ambassador in Vienna was hardly an enticing post of honor f a former Reich Chancellor and recent Vice-Chancellor.

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PAPEN's own good economic situation excluded all along any material motives. PAPEN's letter of 16 July 1936 to HITLER (Def.Doc.No. 71) is the report of the success of his two years' efforts to bring about settled peaceful relations between both the countries. The treaty of 11 July 1936 put the seal upon this.

This document, the evidential value of which is without a shadow doubt, clearly explains the task allotted to PAPEN and its performance. PAPEN points out that the aim has been reached, for the execution of which he has been called to Vienna on 26 July 1934. He considered his task as accomplished with the conclusion of the Treaty.

No clearer evidence can be produced of the exactness of PAPEN's statement on his task and its performance than by this letter. Why did they believe they must impute a dubius interpretation to his mission? As an obliging instrument of HITLER's plans of aggression he has undertaken the task to prepare and carry out a forcible annexation of Austria. He has been charged with undermining the SCHUSCHNIGG Government and cooperating with Austria's illegal Nazi movement to this effect. All he did with a view to pacifying the mutual relations has been camouflage, in order to enable him to carry out his underground plans. And here the trustworthy statement of account to his mandatary,

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Is this also to be a camouflage, and give a presentation which stands in absolute contradiction to the facts? This letter, found by the Allied troops in the secret records of the Reich Chancellory and now thankfully placed at the disposal of the Defense Counsel by the Prosecution?

The third point that clearly characterises PAPEN's activity in Vienna is his recall on 4 February 1938. The numerous recalls and nominations of that day clearly showed a reorganization of the most important military and political posts. The personalities of the recalled military and diplomats clearly show what the sole reason was for the unusual and extensive sudden change at that time. If HITLER then also recalled PAPEN from his post, without an actual reason for this, entirely unexpectedly and without giving a reason, it is thereby clearly proved, that HITLER at the beginning of a radical foreign political course no longer saw in PAPEN the right man for VIENNA.

These three points are suitable to confirm unequivocally and sufficiently the peaceful activity of PAPEN during the entire duration of his Austrian mission. As the PROSECUTION, however, also strives here to apply single events against PAPEN, I shall submit this period also to a short consideration still thus far.

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We see Papen in a steady struggle with the illegal movement. The reproach that he had conspired with it, is best led ad absurdum by the fact that Papen was selected as victim of an attack by these same illegal men, according the plans of the illegal movement which have been confirmed by Foreign Minister SCHMIDT. The documentary evidence from the reports at hand which Papen sent to Hitler also has but one meaning. Here, too, there is a completely clear piece of evidence, since the reports to Hitler which took place regularly in the course of business, actually excluded an intention to deceive the public. It is regrettable that all the reports could not be found, in order to give, in their entirety, a clear, complete historical picture of Papen's activity. Only a fraction of the reports are in front of us. But when Papen had transferred abroad at the end of his activity the copies of all his reports, as the evidence has shown, then he could have done this only in order to have a historical justification for his policy of peace. It is proven by it in complete clearness that his policy reproduced in the complete reports must have been a policy which was in contrast to the development which has been brought about by the other side in March, 1938.

All witnesses who have appeared in court, and who could make statements abour the Austrian conditions, have stated under oath that Papen led a policy of pacification and fought against any meddling of the illegal movement in the political happenings.

What can be concluded from the presentation of the Prosecution against that?

That Papen had to maintain a certain outside connection to members of the Austrian Nazi movement, corresponding to his position as German Ambassador and corresponding to the state treaty concluded with Austria? A connection which was in no way kept secret, which was of an observing nature only, and which was necessary in order to fulfil the obligation to report to Berlin about the actual conditions in Austria. If he had actually worked together with the illegal movement in the way the Prosecution states, this would most certainly have been expressed in his reports to Berlin. He does not fabricate any secret plans with the law breakers.

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but we see him on the contrary in open negotiations with the Austrian government about the participation of the national opposition in the governmental work, which was agreed on in the July Treaty. And if we finally have before us the deposition of the history of the illegal movement in the report of RAINER (PS-812), we see their activity in those years takes place without the slightest cooperation or support from PAPEN.

What can be concluded against the defendant from the fact that he was interested in the activity of the Austrian Liberty Organization (Freiheitsbund)? If it is set forth that this Liberty Organization represents a non-Nazi, trade-union, Austrian organization which was considered to be ready to go with SCHUSCHNIGG and to support the Cabinet?

What can be concluded against the defendant from the fact that he also observed the governmental conditions in Austria and reported to Berlin about them? And when the wish is expressed at this occasion that this or that constellation is favorable for the development of friendly relations with Austria?

During the cross-examination the Prosecution has presented reports of foreign agencies which PAPEN forwarded to Berlin. They believe that PAPEN has made the content of these reports his own. This supposition must be incorrect. The informational purpose of sending reports of the foreign secret service is clearly at hand. Beyond that the following has to be established here also. PAPEN especially forwarded to Berlin also those documents which had come into his hands and which contained a criticism of the German conditions. The witness GISEVIUS and LAHOUSEN have pointed out that HITLER was informed incorrectly or insufficiently by his closest coworkers. The critical reports of foreign countries which PAPEN had forwarded to HITLER in a direct way, could and also should fulfil the aim of drawing HITLER's attention to abuses and to make him abolish them. This is especially often the case concerning statements about the anti-clerical conditions in Germany. The presentation of the reports in the case TSCHIRSCHKY concerning the activity of the Gestapo which were especially mentioned in the cross-examination, are on the same line.

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The regular reports of PAPEN to HITLER deal partly also with the conditions in the neighboring states. The checking of the contents of the reports shows that they deal entirely with problems which are in direct connection with the foreign political situation of Austria in the Balkans and which therefore fall into the sphere of tasks of the ambassador accredited in Vienna.

Finally we have to go into the affidavits of MESSERSMITH. He describes events after a period of 10 years, in the case of PAPEN, seemingly in free memory. Time and later acquired information obviously seem to have clouded the picture of memory so completely that we see, for example, PAPEN's explanations about his tasks in the Southeastern area reproduced in the two affidavits with contents basically deviating from each other.

My criticism can furthermore be satisfied with the statement that the contents of the affidavits are in contradiction to every rule of experience andlogic. A diplomat cannot have revealed the secret aims of his politics to the representative of another state who meets him with emphasized reserve. It is impossible, as MESSERSMITH says in another place, that PAPEN told not only him, but even publicly, his alleged plan to overthrow SCHUSCHNIGG, with whose government PAPEN himself was accredited. It is an impossibility that such disclosures are supposed to have had no consequences whatsoever, and that they have been put down in an affidavit for the first time in 1945.

The two affidavits can therefore be no basis for the finding of a judgment, besides the fact that their content is disproved by the other evidence, which contained both the intentions and the actions of PAPEN.

I believe to have sufficiently discussed therewith the period in which PAPEN exercised his activity as Ambassador extraordinary in Vienna.

Beyond it, the Prosecution has taken into consideration PAPEN's cooperation in the discussion at Berchtesgaden on 12 February.

The occurrence of the conference of Berchtesgaden was not the beginning stage of a new course, but the result of the development up to that time.

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Months before, PAPEN and SCHUSCHNIGG in conversations had already regarded a meeting in the near future between the two statesmen as desirable. The July Treaty had naturally left many points of difference undecided. The testimony of the witness Guido SCHMIDT showed us the situation clearly: an opposition party very powerful in numbers, though officially not allowed, but tolerated tacitly because of actual conditions, looked idealogically to a full extent toward its, at least idealogical / leader in Germany. There the leader of this Party was at the same time head of the state. Regarding foreign policy a separation of the parties in both countries was necessary. The inner idealogical unity, however, necessarily had to lead to differences, again and again. We see, accordingly, in the Austrian government an understandable reserve and a constant concern to prevent a growth of the influence of this movement in administration and government. The treatment of the questions resulting from the July Treaty corresponded in practice also to this state of interests. It was obvious that the Austrian side should make an effort to treat the stipulations of the Treaty in a restrictive way. It was only natural that the wish existed on the German side to exhaust the possibilities of the Treaty to the fullest extent. Therefore, a direct contact with the responsible heads of both countries, who on the German side was at the same time the head of the Party, could only be regarded as a reasonable requirement.

The recall of PAPEN on the fourth of February threatened to break up this development. Perhaps with the approach of the more rigorous course which was expected, a meeting of that sort for the purpose of the eradication of existing difficulties would be postponed forever. Certainly, a different result could have been expected later on, in a tenser atmosphere, from the collaboration of a radical successor, than that hoped for by SCHUSCHNIGG and PAPEN.

It is therefore thoroughly understandable that even after his recall, PAPEN, during his farewell visit to HITLER on 5 February, when they came to speak of affairs, [illegible]ll accepted the mission to bring about the intended Conference and to accompany the Austrian delegation to Berchtesgaden for this purpose.

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The Prosecution accuses PAPEN, that already at that time the program of the subsequent talks had been determined. PAPEN, contrary to this, has testified in his interrogation, that he had only received the mission to arrange the discussion for the purpose of clearing up all points of difference on the basis of the July Treaty. The Prosecution still lacks the proof for its claim to the contrary. From what has happened on 12 February, it cannot in any way be concluded because of Hitler's personality of Hitler, what he personally thought at the first mentioning of such a discussion on 5 February, and much less, of which of his plans he informed PAPEN. The evidence has shown that the points voiced by Hitler on 12 February are identical with those demands which the Austrian National-Socialists had raised immediately prior to the discussion and transmitted to Hitler in their own channels. From this it can be seen that the subject of conversation chosen by Hitler in the discussion of 12 February was at the very least substantiated and could not as yet have been on hand on 5 February. If the Austrian Nazis preceded PAPEN with their demands to Berchtesgaden, then the view of the Prosecution is thereby refuted, that PAPEN had conspired with Hitler and the Austrian party. In this case he him would probably have been the best liaison man between the wishes of the Party and Hitler. This is also emphasized through the of the witnesses SEYSS-INQUART and RAINER, who have stated clearly that they did not have any contact with PAPEN during this time. Rainer also points out in his report, that PAPEN had been of the opinion that the fact of the prearranged discussion had remained secret before the Austrian party.

The Prosecution has used the claim for the incrimination of PAPEN, that at the reception of the Austrian delegation on the German-Austrian frontier he had called Schuschnigg's attention to the presence of generals. Whether this really corresponds to the facts was not proven by the presentation of evidence. The sole evidence which can be used in respect to this is the testimony of Schmidt. The latter could not longer exactly testify anymore, whether PAPEN had spoken of <u>one</u> General,

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namely Keitel, who according to past experiences after taking over his new office constantly kept himself in the surroundings of Hitler, or of several Generals. PAPEN himself does not know anymore today, if and in what form he made such an exclamation to Schuschnigg at the time. He also does not know if at the time he was aware at all of the presence of generals. It is very possible that it came to his knowledge at the overnight stay in Salzburg, where he had stayed at a different hotel from the Austrian delegation. In any case, however, the fact cannot be overlooked, that even if PAPEN had made the statement claimed by the Prosecution, this statement was made prior to the visit. That, therefore, he did not participate in any attempt at intimidation toward the Austrian gentlemen which might have been aimed at the motive of surprise. His participation in the discussion has been cleared by the evidence. Hitler alone was in command, who, in a brutal manner surprising to those who knew him, tried to impress Schuschnigg. Technical details were negotiated with Ribbentrop. PAPEN more or less participated as a spectator, which also bore the fact into account, that he did not occupy his official position anymore. According to the uniform testimonies of those participating, he only saw his task raised by circumstances into intervening soothingly.

One has to consider his position: he sees his intentions doomed to failure through the behavior of Hitler, which cannot be expected of any reasoning human being. He sees how a man who is quick-tempered by nature in his excitement lets all that go which is necessary for a reasonable discussion in the sphere of a conference of statesmen. He hears Hitler's threats, and has to consider him determined to let things go an irreparable way at the abrupt failure of the negotiations. In the framework of this situation, therefore, the achievment of certain concessions - Hitler acquiesced in the field of the Army Ministry and the economic demands - and the postponement, achieved after a hard struggle, of the final settlement for ratification by the Austrian government and the Federal President (Bundespraesident) was the optimal solution of the dangerous situation.

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Even though in this point PAPEN agreed with the Austrian statesmen who undoubtedly were willing while safeguarding only reasonably the interests of their State to affix their provisional signatures on account of the prevailing conditions, this does not justify the charge against PAPEN that he approved and intended the result from the outset.

HITLER's opinion on PAPEN's previous activity in Austria and his participation in the Conference at Berchtesgaden is best illustrated by the fact that no further office of any kind was any more assigned to him in Vienna. It is very unlikely that during the decisive developments to come, HITLER would have failed to assign tasks to a man who inwardly and effectively attended the Conference at Berchtesgaden. One would not have replaced him by new people from Berlin, and for the still more complicated situation one would not have dispensed with the services of the man who, by reason of his years of service, was most intimately familiar with conditions as a whole. One would certainly have availed one self of his personal contacts with Austrian statesmen which qualified him, in preference to others, to continue work on HITLER's plans. If the Prosecution's interpretation of PAPEN's efforts towards understanding during the discussion in Berchtesgaden as deceitful maneuvering were correct, there is little doubt but that PAPEN would have been permitted to continue working along that line, and after replacing his person one would not have charged people to deal further with those things whose course was much more radical.

PAPEN's memorandum on his farewell visit to the Prime Minister is revealing. A man who in his own commentary to Berlin, passes on SCHUSCHNIGG's interpretation-that to some extent he had acted under pressure in Berchtesgaden - under "noteworthy", is little likely to have been an active participant in the coercive negotiations.

The record of evidence proved that thereafter PAPEN no longer held any public office.

The new Charge d' Affaires, Freiherr von STEIN, a pronounced National Socialist, took charge of the Embassy. He was assisted by KEPPLER, a cl

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friend of Hitler. Papen, on the other hand, makes his farewell calls, and he takes up residence at Kitzbuehel, a winter-sport resort.

In the meantime things are getting more and more critical. The plebiscite which Schuschnigg announces results in a development which perhaps Hitler even had not intended on that scale. The visit of Seyss-Inquart and Rainer on 9 March to Papen was accidental; there were no deliberations of any kind, and no decisions were taken. For Papen even to express the view - which Rainer confirmed - that, considering the formulation of the questionnaire, no decent Austrian could be expected to say "No," but that he was bound to follow Schuschnigg's password, suffices to indicate the contrast of Papen's position towards the views of the Austrian Nazis and the views which the people from Berlin subsequently brought out.

If, in conclusion, I may still revert to Papen's presence in Berlin on 11 March I must say that even in reviewing things in retrospect I can give no clear explanation for Hitler's desire to know Papen in Berlin. Reasons for it may have been manifold. Should Hitler already at that time have been determined to force a solution in that direction as it finally came about - after all, doubts in that respect may exist - the reason might have been that he did not dare leave in Vienna this man who espoused the policy of peace; he might perhaps have assumed that because of the extremity of the position in which they found themselves, Austrian Government officials might perhaps have turned to him and that with Papen's help propositions for a settlement might perhaps have come about.

I would remind you of a similar situation, prior to the beginning of the campaign against Poland when Hitler was fearful lest "some swine (filthy fellow) might still come along with a proposal for an understanding in the last minute." On the other hand it is also quite conceivable that it was suitable to have Papen in Berlin in the event of yielding on the part of the Austrian Government, in which case he might not have wanted to be deprived of Papen's advice, because of his familiarity with conditions

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In the scope of the necessary consideration of the indictment, it is, however, unnecessary to attempt to actually understand HITLER's inner motives. Decisive to be sure is finally merely that which PAPEN did during his presence in the Reich Chancellory.

Upon his arrival, he expressed to HITLER the desire that through the postponement of the plebiscite, a lessening of tension would have to be brought about. His attitude, concerning the further events was documented by PAPEN through his standpoint concerning the military preparations, respectively to the lifting of the order to march in. The shorthand notes of the telephone conversations which had been carried on by GOERING have given us a plastic picture of the events in the Reich Chancellory. In connection with his testimony the result is that essentially he was the driving force and occasionally went even beyond HITLER's intentions. He emphasized that from the beginning he had been consistent in striving for a solution, he now did not need to reflect or be advised in order to come to a decision. SEHERR-THOSS's affidavit renders PAPEN's attitude on the eve of the day in question. In an intimate circle he remarked that he had advised against marching in, that against his advice, HITLER, however, just then "had committed the madness of issuing the order to march in".

Finally we still have a clear picture of PAPEN's attitude concerning this in his conversation with the witness GUIDO SCHMIDT, which took place years later.

Austria's annexation was for a long time then already an historical fact and was considered by most Germans a great political achievement. PAPEN, the other hand, criticises most severely the methods used by HITLER and acknowledges anew the fundamental of legality and faithfulness to treaties which, seen from a broad view, was forsaken here to the detriment of Ger-

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I come to the result that - independent of the question of law, as to whether the case of Austria is at all capable of discussion within the limitations outlined by the Charter - in completion of the defense of the defendant, contrary evidence has been produced that PAPEN neither brought about the entry into Austria himself nor prepared for it - a policy directed to this end; that his activity in Austria exclusively served the purpose which he assumed with his commission on 26 July 1934: a policy which served for the restoration of friendly relations between both countries, a legal aim which had not the slightest thing to do with a special or general policy of aggression.

The period following this is not brought under discussion by the Prosecution. The defense, however, must go into even this as evidence in refutation. It is easy to find a proof in established facts from this time, that the assertions of the Prosecution from the earlier period must be incorrect.

The Prosecution leaves PAPEN at the termination of his activity in Vienna and it gives no explanation for the reason to which PAPEN's current inactivity can be traced back. There is no cause, no event, which could have impelled the alleged conspiration to this conduct.

We come now to the period of the immediate preparations for war and the outbreak of the war.

According to the assumption of the Prosecution, the former conspirator PAPEN at this time abandoned his previous course, in spite of the possibilities that were doubtless available. The Prosecution ought to have cleared up this transformation in some way, if one is not

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immediately to regard the interpretation of the actions in the earlier period as inconclusive in the sense of a criminal objective.

Papen retired to the country after the incorporation of Austria, where he remained a loof from public life for over a year, until April 1939.

This fact is important if one considers the situation at that time. 4 February 1938 doubtless brought about a more rigorous course in German foreign policy.

In the opinion of the Prosecution PAPEN must have been a willing tool of HITLER for the first actions in preparation for this policy. Were this applicable, then one would have to regard PAPEN, in consideration of the result aimed at, as a hundred-per-cent successful diplomat. This so successful diplomat and conspirator now does not go to some place where he can continue his activity further, where preparations might have to be made in a similar manner, as for example in the Sudetenland. He is not placed in a position, where the great political threads run together, in Paris, London or Moscow, where on the basis of his international reputation he might indeed appear as undoubtedly the most suitable man to support the Hitlerite policy. This man retires from public life at a time when the whole foreign policy of HITLER, when the Sudeten crisis, the incorporation of Czechoslovakia and the preparations of the war against Poland created a period of an extremely tense political atmosphere. If at that time HITLER did not take his services into consideration at all, then it is clearly apparent from this alone, that PAPEN was not a conspirator, not even a follower of HITLER and not even the instigator of the first success in Hitlerite policy. the incorporation of Austria.

In this sense it is also significant, that PAPEN is first called upon in a situation in which it was not the object to occupy a country, or to make preparations for intended operations. PAPEN is called upon at a time when the policy of expansion of our Italian ally into Albania caused difficulties and gave reason to fear entanglements with Turkey. And so here is a clear task, that of maintaining the status of peace.

If the Prosecution cannot utilize the activity in Ankara for its own support, then it still does not avoid passing unfavorable judgment on the acceptance of the post by PAPEN. It is, therefore, also necessary to go into this point in detail.

PAPEN was also very reluctant to accept this new appointment. Twice already, in more peaceful times, he had refused the appointment out of general considerations, because he no longer wanted to be active in any official position at all. Now he sees reasons to which he can no longer close his eyes. He sees a new task to which he believes it his duty to devote himself.

The entire political situation was extremely strained after March 1939. Even from a secondary flank the spark could easily fall on the powder-barrel. A conflict between Italy and Turkey could in fulfilment of existing treaties, bring about a general war. If by his activity he could at least exclude the possibility of war to this extent, PAPEN must have found personal justification for taking over the mission. He was confronting the problem, which confronts all those, who have been called upon to cooperate within the framework of a system of which they disapprove. To stand aside, to adopt a completely passive

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attitude is, of course, the easier way, particularly if no other reasons impel the person in question to accept the post. The more difficult way is to take over a task within the framework of an over-all policy of which one disapproves, which in part of its field offers an aim worthy of achievement. And if this partial field is of such importance that the prevention of a possible war depends on it, then the decision to take over such a mission can only be understandable and worthy of approval. If only the most remote possibility of attaining such a goal exists, then private interests and feelings must step into the background.

If one reviews what PAPEN really did after taking over this mission to Ankara, if one sees that by his intervention the Italians were moderated from the German side and belligerent complications were avoided, if one considers that later PAPEN was successfully able to prevent the war from being extended to Turkey and the more distant southeastern territories, then in looking back one can only say that his taking over the mission against his personal feelings was the right decision.

If we saw during the presentation of evidence to what an extent PAPEN made efforts to bring about a peace of renunciation, as early as the year 1939 then we must also approve his acceptance of the mission for this reason, independently of the fact of what final success was to crown his efforts, even if one could have only figured on a quite dwindling possibility of reaching the desired goal

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The assumption of such a position would finally also be justified from the moral viewpoint if he had only had as much as one single partial success, as, for example, the saving of 10,000 Jews from being deported to Poland, which has been confirmed by the affidavit of MARCHIONINI.

In this connection I want to discuss a misunderstanding which could arise from the judicial inquiry concerning this affidavit.

In his affidavit, MARCHIONINI points out the lives of the Jews involved were saved by the intervention of PAPEN. PAPEN confirmed, upon interrogation, the correctness of the affidavit. His confirmation corresponds also with the facts. This does not mean, however, that the meaning of that action, as it is known to MARCHIONINI today, and which he mentions therefore in his affidavit, was already known then. PAPEN knew, of course, that the deportation to Poland for an unknown purpose and with an unknown goal was something very grave. This also explains his intervention. He knows only today, the same as MARCHIONINI certainly only knows today in all clarity, that the path of these people was not supposed to lead into deportation labor but directly into the gas chambers.

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The activity in Ankara has been fully described by the witnesses KROLL and Baron von LERSNER. It clearly shows a unified peace policy, a peace policy which, independently from the momentary military and political situation, even at the highest point of German victories, stressed a peace of renunciation. PAPEN was according to the statements of ROSE and KROLL deeply affected by the outbreak of the Polish war and condemned it from the first.

How can such an attitude and such an activity be reconciled with the assertions of the Prosecution? PAPEN is supposed to have brought about the war in a conspiracy with HITLER. The Prosecution believes it can deduce the criminal act from his behaviour in the years preceding the war. No proof has been submitted as to what may have turned PAPEN the conspirator into an advocate of peace. It has rested its accusations on the shaky foundation of deductions and omitted to verify whether the assertions of the Prosecution might in any possibly way be in agreement with the whole personality of the defendant. In view of the nature of the indictment, one cannot be content to solve the problem by the assupmtion of a splitting of his personality and an opportunistic attitude. The indictment includes crimes of monstrous proportions. Such an indictment must also rest on the personality of the culprit. Participation in such a conspiracy is only conceivable in the case of a complete identity with the doctrines discussed in the proceedings and described as "Nazism" to their utmost consequences. A conspirator in the sense of the indictment can only be a man who has given himself up entirely, with the whole of his personlity, to that aim. He must be a man in whom even the last moral ties have been abolished. Such a personality cannot be a phenomenon of brief duration; the readiness for such a crime must lie within the person of the culprit.

In contrast to the distorted picture of PAPEN's character drawn by the Prosecution, his true personality has been shown up during these proceedings in all clarity. We see a man who is

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rooted by origin and education in tradition and conservative ideas. A man of consciously responsible national feeling, to whom for just these reasons a regard for others is natural.

His personal ties with the neighboring country in the West, his knowledge of the world preclude from the first his seeing things from a one-sided viewpoint, according to his own, national wishes. He knows that life requires understanding and the willingness to understand. He knows that international life is built on sincerity and faith and that one must stand by one's word.

We have before us a man who, on account of his deep religious feeling, which he always makes the basic principle of his actions, must necessarily stand in opposition to the ideological doctrines of National Socialism. We have followed his political career and seen that he held fast through all the periods of his activity to his basic political creed which was built on these elements.

In keeping with this fundamental prinicple and fully conscious of his responsibilities he did not evade any of the tasks assigned to him. And even if we are witnessing in the end the collapse of his hopes and his endeavours, this cannot be the touchstone for the sincerity of his convictions.

To arraign such a man at all under the indictment of a crime in the sense of the facts established in the Charter can surely only have been possible on the basis of the legal simplifications which an indictment for conspiracy offers to the Prosecution. In the facts of the case against PAPEN, even this interpretation must fail.

The prosecution has not been able to prove that PAPEN has at any time involved himself in the alleged conspiracy. Opposed to this is the reality. In the evidence offered in refutation facts are established which make a connection of his person with even the idea of the facts in the indidment impossible.

The final conclusion is clearly given: Franz von PAPEN is not guilty of the charge brought against him!